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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDOLPH LEE AREY,

Defendant and Appellant.

C081974

(Super. Ct. No. 15F0050)

Appointed counsel for defendant Randolph Lee Arey has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

Between March and November 2014, defendant repeatedly kissed the victim and touched and rubbed her genitals, buttocks, and breasts.

Defendant was charged with continuous sexual abuse of a child under the age of 14 years (Pen. Code, § 288.5, subd. (a); count one),¹ lewd and lascivious acts on a child under the age of 14 years (§ 288, subd. (a); counts two, seven, ten, eleven, twelve, and thirteen), lewd and lascivious acts by force or fear on a child under the age of 14 years (§ 288, subd. (b)(1); counts three, four, eight, nine, and fourteen), sexual penetration by force or fear against a child under the age of 14 years (§ 289, subd. (a)(1)(B); count five), and sexual penetration of a child under 14 years of age (§ 269, subd. (a)(5); count six).

On November 20, 2015, defendant pleaded no contest to count six. The remaining charges were dismissed during sentencing. On January 26, 2016, the trial court granted defendant's motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 and new counsel was appointed.

On April 26, 2016, the trial court sentenced defendant to 15 years to life in state prison, with 474 days' credit.² (§ 269, subd. (b).) The trial court imposed a \$4,500 restitution fine (§ 1202.4, subd. (b)), a corresponding parole revocation fine suspended unless parole was revoked (§ 1202.45), a \$40 court operations fee (§ 1465.8), a \$30 conviction assessment (Gov. Code, § 70373), and a \$350 investigation and report cost (§ 1203.1b). The trial court also imposed \$20 per day in jail fees, totaling \$8,260.00, but on August 4, 2016, amended the abstract of judgment to omit that fee. The minute order and abstract of judgment reflect a \$121 booking fee (Gov. Code, § 29550.2), but the trial court failed to orally pronounce this fee during sentencing.

Defendant obtained a certificate of probable cause.

¹ Undesignated statutory references are to the Penal Code.

² Although defendant was sentenced by a judge other than the one who accepted the guilty plea, defendant waived his rights under *People v. Arbuckle* (1978) 22 Cal.3d 749.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

With respect to the \$121 booking fee, it has long been held that where there is a discrepancy between the oral pronouncement of judgment, the minute order, and the abstract of judgment, the oral pronouncement controls. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We shall order the trial court to correct the abstract of judgment.

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment omitting the \$121 booking fee and to forward a certified copy to the Department of Corrections and Rehabilitation. The judgment is affirmed.

RAYE, P. J.

We concur:

NICHOLSON, J.

ROBIE, J.